

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LORETTA RIESER,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
STANDARD LIFE INSURANCE CO. , et al.,	:	No. 03-5040
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

May 25, 2004

Plaintiff Loretta Rieser brings this action alleging violations of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001-1461, and the Pennsylvania bad faith statute, 42 PA. CONS. STAT. ANN. § 8371, against Defendants Standard Life Insurance Company (“Standard Life”), Canada Life Assurance Company (“Canada Life”), and Gross-Given Manufacturing Company (“Gross-Given”), and alleging fraud against Defendant Gross-Given. Presently before this Court are Defendant Standard Life’s motion to dismiss Plaintiff’s bad faith claim, Defendant Canada Life’s motion to dismiss Plaintiff’s bad faith and ERISA claims, and Defendant Gross-Given’s motion to dismiss Plaintiff’s bad faith, fraud and ERISA claims. Additionally before this Court is Defendants Standard Life and Canada Life’s motions to strike Plaintiff’s demand for a jury trial. For the reasons that follow, the Court grants Defendants Standard Life and Canada Life’s motions to dismiss and grants in part and denies in part Defendant Gross-Given’s motion to dismiss. Furthermore, the Court grants Defendant Standard Life and Canada Life’s motions to strike Plaintiff’s demand for a jury trial.

I. BACKGROUND

Plaintiff is the widow of David R. Rieser, an employee of Gross-Given at its Warminster, Pennsylvania facility from February 19, 1952 until January 28, 1998. (Am. Compl. ¶ 12.) On January 28, 1998, Mr. Rieser ceased active employment at Gross-Given because he became disabled due to emphysema. (*Id.*) Gross-Given provided an employee benefit welfare plan including health, life, and disability insurance coverage through Standard Life for its employees. (*Id.* ¶ 14.) In November 1997, prior to going on disability, Mr. Rieser received a memorandum from David Riccio, a Gross-Given employee, concerning his disability and benefits under the employee benefit plan. (*Id.* ¶ 17.) The memorandum explained that when Mr. Rieser ceased active employment due to his disability, Gross-Given would continue to pay the premiums for his health and life insurance and that coverage would remain the same as long as he remained disabled. (*Id.* ¶ 18.) Furthermore, the memorandum explained that Mr. Rieser would also receive disability benefits as long as he remained disabled, but that such benefits would be reduced after he reached the age of sixty-five and would cease entirely when Mr. Rieser chose to access his retirement benefits. (*Id.* ¶¶ 17-19.) Accordingly, the Riesers refrained from accessing Mr. Rieser's retirement benefits in order to maintain his disability payments. (*Id.* ¶ 20.) At the time he received this memorandum and when he ceased active employment at Gross-Given, Mr. Rieser was sixty-one years old. (*Id.* ¶¶ 13, 17.)

In October 1998, approximately nine months after Mr. Rieser ceased active employment, a disability benefits analyst from Standard Life sent a letter to Mr. Rieser informing him that because he was over the age of sixty when he became disabled, he was not eligible to have his life insurance coverage continue without the payment of premiums. (*Id.* ¶ 23.) The letter asked Mr. Rieser to contact Gross-Given regarding his "membership status and premium payments" and stated that his

life insurance would remain in force until the termination of his status as a “member” or the cessation of premium payments, whichever occurred first. (*Id.* ¶ 24.) Plaintiff alleges that neither Gross-Given nor any other entity ever informed Mr. Rieser that he was no longer a member of the plan, that he was excluded from coverage, or that the plan had been amended in any way. (*Id.* ¶¶ 26-28.)

On November 1, 2000, Gross-Given replaced the Standard Life policy with a group life insurance policy obtained from Canada Life, effective November 1, 2000. (Def. Canada Life’s Mot. to Dismiss Ex. A (Policy) at 6.) Mr. Rieser died on November 13, 2002 at the age of sixty-six. (Am. Compl. ¶ 11.) After Mr. Rieser’s death, Ms. Rieser submitted claims to Standard Life and Canada Life for \$55,000.00 in life insurance benefits, but both claims were denied. (*Id.* ¶ 30-31.) Plaintiff thereafter exhausted her administrative remedies by appealing these denials of coverage. (*Id.* ¶ 32.)

II. STANDARD OF REVIEW

In considering a motion to dismiss for failure to state a claim upon which relief may be granted, courts must accept as true all of the factual allegations pleaded in the complaint and draw all reasonable inferences in favor of the non-moving party. *Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). A motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint’s allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Although, in deciding a motion to dismiss, courts generally consider only the allegations in the complaint, exhibits attached to the complaint, and matters of public record, a court may also consider

an undisputably authentic document attached to a defendant's motion where plaintiff's claims are based on the document. *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

III. DISCUSSION

A. Standard Life's Motion to Dismiss

Standard Life moves to dismiss Plaintiff's claim pursuant to the Pennsylvania bad faith statute, 42 PA. CONS. STAT. ANN. § 8371, arguing that such claims are preempted by ERISA. Section 514 of ERISA provides that the act "shall supercede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1444(a) (2004). ERISA includes a savings provision, however, that excepts from preemption "any law of any state which regulates insurance, banking, or securities." 29 U.S.C. § 1444(b)(2)(A); *see Ky. Assoc. of Health Plans, Inc. v. Miller* 538 U.S. 329, 342 (2003) (holding that savings clause applies only to state laws that "substantially affect the risk pooling arrangement between the insurer and the insured"). A state statute that falls within the savings clause, however, may nonetheless be preempted if it allows plan participants "to obtain remedies under state law that Congress rejected in ERISA." *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 378 (2002) (*quoting Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987)); *see also Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 55 (1987) (finding that the civil enforcement provisions of ERISA § 502(a) are intended as exclusive remedies).

As numerous courts in this district have recently considered whether § 8371 is preempted by ERISA, this Court will not engage in a lengthy exposition of its reasoning. Plaintiff's claims pursuant to Pennsylvania's bad faith statute are preempted by ERISA because § 8371 does not

“regulate insurance” for purposes of ERISA’s savings clause, and, even if § 8371 did fall within the savings clause, it would nonetheless be preempted because it provides plan participants with a remedy that Congress rejected in ERISA. *See, e.g., Dolce v. Hercules Inc. Ins. Plan*, No. Civ. A. 03-1747, 2003 WL 22992148, at *3-4, 2003 U.S. Dist. LEXIS 23890, at *12-13 (E.D. Pa. Dec. 15, 2003) (holding that § 8371 does not fall within savings clause under *Miller* test and is nonetheless preempted because it enlarges ERISA’s remedies); *Nguyen v. Healthguard of Lancaster, Inc.*, 282 F. Supp. 2d 296, 306 (E.D. Pa. 2003) (same); *McGuigan v. Reliance Std. Life Ins. Co.*, 256 F. Supp. 2d 345, 348, 350 (E.D. Pa. 2003) (same). Accordingly, Standard Life’s motion to dismiss Plaintiff’s bad faith claim is granted.

B. Canada Life’s Motion to Dismiss

Plaintiff asserts two claims against Canada Life: violation of ERISA and a state law claim for bad faith. Canada Life moves to dismiss Plaintiff’s claims against it because, according to the allegations in Plaintiff’s complaint, Mr. Rieser was never covered by the Canada Life group life insurance policy.¹

The clear and unambiguous terms of the Canada Life insurance policy state that when the policy went into effect on November 1, 2000, it applied only to those employees who were “actively at work” on the effective date or who later became full time employees “actively at work” after the effective date. (Def. Canada Life’s Mot. to Dismiss Ex. A. at 6, 8-9.) As defined in the Canada Life

¹ As stated previously, this Court is permitted to consider the Canada Life insurance policy attached to Defendant’s motion. *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993). In addition, it should be noted that Canada Life joined Defendant Standard Life’s motion to dismiss Plaintiff’s claims under the Pennsylvania bad faith statute. Although this Court disposes of Canada Life’s motion on other grounds, the Court’s preemption analysis applies equally to Plaintiff’s bad faith claim against Canada Life.

policy, “actively at work” means that:

a person is either 1) actually performing the person’s normal duties, if it is a scheduled work day; or 2) capable of performing the person’s normal duties, if the person is not at work due to a non-scheduled work day, holiday, or vacation day; at the person’s normal place of employment or at some other location where your business requires the person to be.

(Def.’s Mot. Ex. A at 6.) According to Plaintiff, Mr. Rieser became disabled and unable to work on January 28, 1998, prior to the time the Canada Life policy went into effect. (Am. Compl. ¶ 12.) Furthermore, Mr. Rieser never returned to work as he continued to be disabled until his death on November 13, 2002. (*Id.* at ¶¶ 11, 12.)

Plaintiff does not dispute that Mr. Rieser was never “actively at work” after the Canada Life policy became effective. Instead, Plaintiff makes two arguments in support of his claims against Canada Life. First, Plaintiff argues that under *Burstein v. Retirement Account Plan for Employees of Allegheny Health, Education & Research Foundation*, a plan participant may assert a valid claim for benefits described in an insurance Summary Plan Description (“SPD”) when the description of benefits in the SPD conflicts with that in the detailed ERISA plan document. 334 F.3d 365, 368 (3d Cir. 2003). Plaintiff fails to specify, however, how the SPD conflicts with the detailed ERISA plan. As only the detailed ERISA plan document was attached to Canada Life’s motion to dismiss, Canada Life filed a reply brief with the SPD. (Def.’s Reply Ex. B.) A review of the SPD reveals that it is plainly consistent with the detailed plan document and covers only those employees who are “actively at work.” (*Id.* at 9.) Therefore, under the clear and unambiguous terms of both the detailed plan document and the SPD, Mr. Rieser was not an insured under the Canada Life plan. *See Epright v. Env’tl. Res. Mgmt.*, 81 F.3d 335, 340 (3d Cir. 1996) (holding that term “full time employee” is not ambiguous as it is clearly defined in plan document).

Second, Plaintiff suggests that “it appears that Canada Life amended the terms of life insurance coverage under the employee benefit plan” and “[t]o do that, Canada Life or some other entity was required to follow the amendment procedure set out in its benefit plan.” (Pl.’s Resp. at 3.) As stated above, however, the clear terms of the policy exclude Mr. Rieser from coverage and Plaintiff’s complaint does not allege that Canada Life made any representations to Mr. Rieser to the contrary. To the extent that Gross-Given’s decision to change policy providers constitutes a plan “amendment” necessitating notice obligations, such claims are properly made against the employer, not the replacement provider. *See Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) (recognizing employer’s right to amend plan in accordance with 29 U.S.C. § 1102(b)(3)); *Ackerman v. Warnaco, Inc.*, 55 F.3d 117, 125 (3d Cir. 1995) (noting that substantive remedies are available under ERISA where employer has “actively concealed a change in the benefit plan”).

Because, according to Plaintiff’s allegations, Mr. Rieser was not an insured under the Canada Life policy and because Plaintiff makes no allegation that Canada Life made any contrary representation to him, Plaintiff fails to state a claim against Canada Life. Accordingly, Canada Life’s motion to dismiss is granted.

C. Defendant Gross-Given’s Motion to Dismiss

Plaintiff brings claims against Gross-Given alleging violations of Pennsylvania’s bad faith statute, fraud and violation of ERISA. As discussed above, Plaintiff’s claims under the Pennsylvania bad faith statute are preempted by ERISA. Similarly, Plaintiff’s common law fraud claim against Gross-Given is preempted by § 514(a) of ERISA because the alleged fraud clearly “relates to” the denial of benefits under an employee benefit plan. (Compl. ¶ 14 (stating that Mr. Rieser’s health, life, and disability insurance were provided pursuant to an “employee benefit plan”)); *Kuestner v. Health*

& Welfare Fund & Pension Fund of Phila. Bakery Employers & Food Driver Salesmen's Union Local No. 463 & Teamsters Union Local No. 676, 972 F. Supp. 905, 913 n.7 (E.D. Pa. 1997) (noting that fraud claim would be preempted under § 514(a) if brought under state rather than federal common law); *Pierson v. Hallmark Mktg. Corp.*, 990 F. Supp. 380, 390 (E.D. Pa. 1997) (finding fraud claim preempted). Accordingly, Plaintiff's claims against Gross-Given for bad faith and fraud are dismissed.

Gross-Given also argues that Plaintiff's ERISA claims in Counts III and IV should be dismissed because Gross-Given is not the proper party for suit. Gross-Given contends that it is not liable under ERISA because it is neither the Plan itself nor the plan administrator, but rather "merely sponsored the Plan." (Def. Gross-Given's Mot. to Dismiss at 9-10.) Plaintiff alleges, however, that Gross-Given did act as the plan administrator. (Am. Compl. ¶ 47 (alleging that Gross-Given was "responsible for administering the group life insurance policy").) In addition, as defined in ERISA, the term "administrator" may, in some circumstances, include plan sponsors. 29 U.S.C. § 1002(16)(A)(ii) (2004). Furthermore, apart from Gross-Given's potential liability as a plan administrator, the Third Circuit has held that an employer may be liable under ERISA in its fiduciary capacity for making affirmative misrepresentations on breach of fiduciary duty and equitable estoppel theories. *Curcio v. John Hancock Mut. Life Ins. Co.*, 33 F.3d 226, 235 (3d Cir. 1994) (citing *Fischer v. Phila. Elec. Co.*, 994 F.2d 130, 133-35 (3d Cir.1993)). At this stage, Plaintiff's allegations that Defendant Gross-Given misrepresented that it would continue to pay Mr. Rieser's premiums during the pendency of his disability and refused to pay Plaintiff's life insurance benefits after his death are sufficient to withstand Defendant's motion to dismiss.

D. Motion to Strike Plaintiff's Request for Jury Trial

Plaintiff acknowledges that she has no right to a jury trial on her ERISA claims. (Pl.'s Resp. to Def. Std. Ins. Co.'s Mot. to Strike Demand for Jury Trial at 2); *see Cox v. Keystone Carbon Co.*, 894 F.2d 647, 649 (3d Cir. 1990); *Pane v. RCA Corp.*, 868 F.2d 631, 636 (3d Cir. 1989). As the Court now dismisses Plaintiff's state law claims, Plaintiff's demand for a jury trial is stricken.

IV. CONCLUSION

For the foregoing reasons, the Court grants Defendants Standard Life and Canada Life's motions to dismiss and grants in part and denies in part Defendant Gross-Given's motion to dismiss. In addition, the Court grants Defendants Standard Life and Canada Life's motions to strike Plaintiff's demand for a jury trial. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LORETTA RIESER,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
STANDARD LIFE INSURANCE CO. , et al.,	:	No. 03-5040
Defendants.	:	

ORDER

AND NOW, this **25th** day of **May 2004**, upon consideration of Defendant Standard Life Insurance Co.'s Motion to Dismiss Count VI of Plaintiff's Amended Complaint, Defendant Canada Life Assurance Co.'s Motion to Dismiss, Defendant Gross-Given Manufacturing Co.'s Motion to Dismiss, Plaintiff's responses thereto, and Defendants' replies thereon, and upon consideration of Defendant Standard Life Insurance Co.'s Motion to Strike Plaintiff's Demand for a Jury Trial, Defendant Canada Life Assurance Co.'s Motion to Strike Plaintiff's Demand for a Jury Trial, and Plaintiff's responses thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant Standard Life's Motion to File a Reply (Document No. 35) is **GRANTED**.
2. Defendant Canada Life's Motion to File a Reply (Document No. 39) is **GRANTED**.
3. Defendant Gross-Given's Motion to File a Reply (Document No. 38) is **GRANTED**.
4. Defendant Standard Life Insurance Co.'s Motion to Dismiss Count VI of Plaintiff's Amended Complaint (Document No. 24) is **GRANTED**.
5. Defendant Canada Life Insurance Co.'s Motion to Dismiss (Document No. 27) is **GRANTED**.
6. Defendant Gross-Given's Motion to Dismiss (Document No. 25) is **GRANTED in**

part and **DENIED in part** as follows:

- a. Defendant's motion to dismiss Counts VII and VIII of Plaintiff's Amended Complaint is **GRANTED**.
 - b. Defendant's motion is **DENIED** in all other respects.
7. Defendant Standard Life and Canada Life's Motions to Strike Demand for Jury Trial (Document Nos. 23 & 28) are **GRANTED**.

BY THE COURT:

Berle M. Schiller, J.